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DEC 20 2017

**BY U.S. CERTIFIED MAIL**

December 11, 2017

Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415

Attorney General  
U.S. Department of Justice  
Citizen Suit Coordinator  
Room 2615  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: *The California Sportfishing Protection Alliance v. CEMEX Construction Materials Pacific, LLC*; United States District Court Case No. 2:17-cv-00272-MCE-CKD;  
Settlement Agreement; 45-day review

Dear Citizen Suit Coordinators,

On December 4, 2017, the parties in the above-captioned case entered into a settlement agreement setting forth mutually agreeable settlement terms to resolve the matter in its entirety. Pursuant to the terms of the settlement agreement and 40 C.F.R. § 135.5, the enclosed settlement agreement is being submitted to the U.S. Environmental Protection Agency and the U.S. Department of Justice for a 45-day review period. If you have any questions regarding the settlement agreement, please feel free to contact me or counsel for Defendant listed below. Thank you for your attention to this matter.

Sincerely,

Douglas J. Chermak  
Attorneys for Plaintiff The California Sportfishing Protection Alliance

cc via First Class Mail: Alexis Strauss, Acting Regional Administrator, EPA Region 9

cc via e-mail: Patrick Mitchell, Counsel for Defendant,  
PMitchell@mitchellchadwick.com

Encl.



## SETTLEMENT AGREEMENT

**WHEREAS**, The California Sportfishing Protection Alliance (“CSPA”) is a non-profit public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement and restoration of waters of the State of California, including the Sacramento River.

**WHEREAS**, CEMEX Construction Materials Pacific, LLC (“CEMEX”) operates an industrial facility located at 1890 Parkway Boulevard in West Sacramento, California (the “Facility”).

**WHEREAS**, CSPA and CEMEX are hereby referred to as the “Parties” or the “Settling Parties.”

**WHEREAS**, storm water discharges associated with industrial activity at the Facility are regulated pursuant to the National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS00001 [State Water Resources Control Board], Water Quality Order No. 92-12-DWQ (as amended by Water Quality Order 97-03-DWQ, and then subsequently amended by Water Quality Order 2014-0057-DWQ), issued pursuant to Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342 (hereinafter “Industrial General Permit”). These industrial activities include, *inter alia*, ready mix concrete manufacturing.

**WHEREAS**, the Industrial General Permit includes, among other things, the following requirements for all permittees, including CEMEX: (1) develop and implement a storm water pollution prevention plan (“SWPPP”); (2) control pollutant discharges using best available technology economically achievable (“BAT”) for toxic pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants to prevent and reduce pollutants to achieve BAT/BCT standards; and (3) implement BAT and BCT through the development and application of Best Management Practices (“BMPs”), which must be included and updated in the SWPPP.

**WHEREAS**, on October 28, 2016, CSPA served CEMEX, CEMEX’s registered agent, the Administrator of the United States Environmental Protection Agency (“EPA”), the Administrator of EPA Region IX, the U.S. Attorney General, the Executive Director of the State Water Resources Control Board (“State Board”), and the Executive Officer of the Regional Board Water Quality Control Board, Central Valley Region (“Regional Board”) with a notice of intent to file suit (“60-Day Notice”) under Sections 505(a)(1) and (f) of the Federal Water Pollution Control Act (“Clean Water Act” or “the Act”), 33 U.S.C. § 1365(b)(1)(A), alleging violations of the Act and the Industrial General Permit.

**WHEREAS**, on February 8, 2017, CSPA filed its Complaint in the United States District Court for the Eastern District of California (*The California Sportfishing Protection Alliance v. CEMEX Construction Materials Pacific, LLC*, Case No. 2:17-cv-00272-MCE-CKD).

**WHEREAS**, CSPA contends in its 60-Day Notice and Complaint that, among other things, CEMEX has repeatedly discharged polluted storm water in violation of the Industrial General Permit and the Clean Water Act. CEMEX denies all allegations set forth in the 60-Day Notice and Complaint.

**WHEREAS**, CSPA has inspected the Facility and the SWPPP maintained by CEMEX and CEMEX has agreed to take significant steps to reduce the amount of alleged pollution sources at the Facility and implement new BMPs in an effort to reduce discharge of contaminants from the Facility.

**WHEREAS**, the Parties view their respective roles in improving CEMEX's compliance with the Clean Water Act as a collaborative exercise and have worked together to identify methods to improve storm water management.

**WHEREAS**, the Parties, through their authorized representatives and without either adjudication of CSPA's claims or admission by CEMEX of any alleged violation or other wrongdoing, choose to resolve in full CSPA's allegations in the 60-Day Notice and Complaint through settlement leading to improved storm water management rather than incurring the costs and uncertainty of further litigation.

**WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter by mutual agreement.

**NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CSPA and CEMEX hereby agree as follows:**

#### **I. COMMITMENTS OF CEMEX**

- 1. Implementation of Infiltration Basin:** In order to continue and improve its practices to reduce or prevent pollutants associated with industrial activity from discharging via storm water to the waters of the United States, and in order to further improve its compliance with the requirements of the Industrial General Permit, CEMEX shall implement an infiltration basin that is sized to treat the volume of all storm water runoff from the Facility produced from a greater than 99<sup>th</sup> percentile, 24-hour storm event. This basin shall thus exceed the sizing requirements for volume-based BMPs set forth in the Industrial General Permit.
  - a. CEMEX shall implement the basin by November 2, 2017. The basin shall be located in the area indicated on the map attached hereto as Exhibit A.
  - b. Within twenty-one (21) days of full execution of this Agreement, CEMEX shall e-mail digital photos to CSPA confirming said implementation, and also a survey to confirm that the retention basin was built per the Golder Associates design size criteria.

- c. Upon receipt of the items pursuant to Paragraph 1(b), CSPA shall respond within five (5) business days with either a request for a site inspection to confirm the basin's sizing or a written confirmation via e-mail that the basin is adequate. To the extent that CSPA requests a site inspection, that inspection shall be conducted within five (5) business days. If CSPA does not believe the basin is sized in conformance with the requirements of this Agreement, the Parties shall meet and confer within five (5) business days of receiving written notification from CSPA for a meeting to determine whether a violation has occurred and to develop a mutually agreed upon plan to resolve the violation.
  - d. If, after reasonable efforts by both Parties, the Parties fail to meet and confer or the meet and confer does not result in a mutually agreeable solution, after at least fifteen (15) business days have passed after the meet and confer occurred or should have occurred, the Parties agree to request a settlement meeting before the Magistrate Judge assigned to this action. In the event that the Parties cannot resolve the dispute by the conclusion of the settlement meeting with the Magistrate Judge, the Parties agree to submit the dispute via motion to the United States District Court for the Eastern District of California ("District Court"). In resolving this dispute, the Court shall have discretion to award attorneys' fees and costs to either party. The relevant provisions of the then-applicable Clean Water Act and Rule 11 of the Federal Rules of Civil Procedure shall govern the allocation of fees and costs in connection with the resolution of any disputes before the District Court. The District Court shall award relief limited to compliance orders and awards of attorneys' fees and costs, subject to proof. The Parties agree to file any waivers necessary for the Magistrate Judge to preside over any settlement conference and motion practice.
2. **Amendment of SWPPP:** Within fifteen (15) days of CSPA's approval of the basin as set forth above in Paragraph 1(c), or completion of the meet and confer process set forth above in Paragraphs 1(c) and 1(d), CEMEX shall amend its SWPPP to comply with the requirements of the Industrial General Permit. CEMEX shall amend its SWPPP to include, at a minimum, the following:
- a. An assessment of the non-storm water discharges ("NSWDs") and a description of how all NSWDs have been eliminated.
  - b. A description of the infiltration basin and how it will be effective in reducing the pollutants in the Facility's storm water discharges.
  - c. An update to the SWPPP map that includes the perimeter road, the plugged drains, and the depiction of all storm drains at the Facility.

Within ten (10) days of completion, CEMEX shall mail CSPA a copy of this amended SWPPP.

## II. MITIGATION, FEES AND COSTS

3. **Mitigation Payment:** In recognition of the good faith efforts by CEMEX to comply with all aspects of the Industrial General Permit and the Clean Water Act, and in lieu of payment by CEMEX of any penalties for any violations occurring up to and including the Effective Date of this Agreement, which may have been assessed in this action if it had been filed and proceeded to trial, the settling parties agree that CEMEX will pay the sum of forty thousand dollars (\$40,000) to the Rose Foundation for Communities and the Environment ("Rose Foundation") for the sole purpose of providing grants to environmentally beneficial projects within the Sacramento-San Joaquin River Delta, relating to water quality improvements in that area. CEMEX shall submit this payment within sixty (60) days of CSPA's confirmation of the basin pursuant to Paragraphs I(c) and I(d) of this Agreement. Payment shall be provided to the Rose Foundation as follows: Rose Foundation, 1970 Broadway, #600, Oakland, CA 94612, Attn: Tim Little. CEMEX shall submit copies to CSPA via U.S. mail of the checks and correspondence it sends to the Rose Foundation when making the payments. The Rose Foundation provides notice to the Parties within thirty (30) days of whenever the funds are dispersed by the Rose Foundation, setting forth the recipient and purpose of the funds.
4. **Reimbursement of Fees and Costs:** CEMEX shall reimburse CSPA in the amount of thirty-four thousand dollars (\$34,000.00) to help defray CSPA's reasonable investigation, expert, and attorneys' fees and costs, oversight, and all other reasonable costs incurred as a result of investigating the activities at the Facility related to this Agreement, bringing these matters to CEMEX's attention, and negotiating a resolution of this action in the public interest. Payment shall be made by CEMEX within sixty (60) days of CSPA's confirmation of the basin pursuant to Paragraphs I(c) and I(d) of this Agreement. Payment by CEMEX to CSPA shall be made in the form of a single check payable to "Lozeau Drury LLP," and shall constitute full payment for any and all costs of litigation, including investigative, expert and attorneys' fees and costs incurred by CSPA that have or could have been claimed in connection with CSPA's claims, up to and including the Termination Date of this Agreement. Notwithstanding the foregoing, CSPA must provide CEMEX a fully completed W-9 Form (including Section 4) within five (5) business days of the full execution of this Settlement Agreement as a condition precedent to payment by CEMEX under this Settlement Agreement.

## III. SUBMISSION OF AGREEMENT TO AGENCIES

5. Within three (3) business days of receiving all of the Parties' signatures to this Agreement, CSPA shall submit this Agreement to the U.S. Department of Justice ("DOJ") and the EPA for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five (45) calendar days after receipt by the DOJ and EPA. In the event DOJ and/or EPA comments negatively on the provisions of this Agreement, the Parties agree to meet and confer to attempt to resolve the issues raised



by DOJ and/or EPA. The Parties agree that no additional attorneys' fees or payments to CSPA or its counsel will be owed by CEMEX in the event the DOJ comments negatively on the provisions of this Agreement as the Parties have entered into this settlement of all claims in good faith.

#### **IV. DISMISSAL OF COMPLAINT**

6. Within seven (7) calendar days of completion of both of the payments required above by Paragraphs 3 and 4, CSPA shall file a Stipulation to Dismiss and [Proposed] Order thereon pursuant to Federal Rule of Civil Procedure 41(a)(2) with the United States District Court for the Eastern District of California ("District Court"), specifying that CSPA is dismissing all claims in CSPA's Complaint.

#### **V. WAIVER AND RELEASES**

7. **CSPA Waiver and Release of Noticed Parties and Covenant Not to Sue:** This Agreement is a full and complete settlement of any and all claims that have been or could have been asserted based on the facts alleged in the 60-Day Notice and Complaint and all other claims known and unknown existing as of the date of execution by CSPA of this Agreement, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387, for violations occurring on or before the date of termination of this Agreement. For the period beginning on the Effective Date and ending on the Termination Date, CSPA agrees that neither CSPA, its officers, executive staff, members of its governing board nor any organization under the control of CSPA, its officers, executive staff, or members of its governing board, will file any lawsuit against CEMEX, or its officers, directors, employees, agents, affiliates, assignees, parent companies, or subsidiaries, seeking relief for alleged violation of the Clean Water Act or violation of the Industrial General Permit based on the facts alleged in the 60-Day Notice and Complaint or that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387, for violations at the Facility occurring on or before the date of termination of this Settlement Agreement.
8. **CEMEX Waiver and Release of CSPA:** Except as otherwise provided in this Agreement, upon the Effective Date, CEMEX, on its own behalf and on behalf of its officers, directors, employees, parents, subsidiaries, affiliates, or their successors or assigns, or its agents, and other representatives, releases CSPA and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns and its agents and other representatives from, and waives all claims which arise from or pertain to the 60-Day Notice and Complaint at the Facility, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters included in the 60-Day Notice and its resolution via this Agreement.
9. **The Parties' Mutual Release:** Except as otherwise provided in this Agreement, the Parties, including their respective successors, assigns, officers, agents, employees, attorneys and all persons, firms and corporations having an interest in them, hereby

release each other from any and all claims and demands of any kind, nature or description whatsoever, and from all liabilities, damages, injuries, actions or causes of action, either at law or equity, which the Parties may have against each other arising from, or related to, the allegations and claims as set forth in the 60-Day Notice and Complaint at the Facility based on events occurring on or before the date of termination of this Consent Decree. The Parties hereby expressly waives all claims described above, including presently unknown claims contemplated or covered by Section 1542 of the Civil Code of the State of California, the provisions of which also are hereby expressly waived since the date of the 60-Day Notice up to and including the Termination Date. The Parties hereby acknowledge and agree that they understand that this statute provides:

*A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.*

10. **No Admission:** The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation. Nothing in this Agreement shall be construed as, and the Parties expressly do not intend to imply, any admission as to any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by either Party of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under this Agreement.

## V. MISCELLANEOUS PROVISIONS

11. **Effective Date:** The Effective Date shall be the date on which all the Parties have signed the Agreement.
12. **Term of Agreement:** The Agreement shall continue in effect from the Effective Date until the District Court's entry of the dismissal order pursuant to Paragraph 6 ("Termination Date").
13. **Execution in Counterparts:** The Agreement may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.
14. **Construction:** The language in all parts of this Agreement, unless otherwise stated, shall be construed according to its plain and ordinary meaning.
15. **Authority to Sign:** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agreed to all of the terms and conditions of this Agreement.



16. **Integrated Agreement:** All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties concerning the subject matter of this Agreement are contained herein.
17. **Severability:** In the event that any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.
18. **Choice of Law:** This Agreement shall be governed by the laws of the United States, and where applicable, the laws of the State of California.
19. **Full Settlement:** This Agreement constitutes a full and final settlement of this matter. It is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by the Parties with and upon advice of counsel.
20. **Negotiated Agreement:** The Parties have negotiated this Agreement, and agree that it shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Agreement, and any uncertainty and ambiguity shall not be interpreted against any one party.
21. **Modification of the Agreement:** This Agreement, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the Parties.
22. **Assignment:** Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.
23. **Mailing of Documents to CSPA/Notices/Correspondence:** Any notices or documents required or provided for by this Agreement or related thereto that are to be provided to CSPA pursuant to this Agreement shall be, to the extent feasible, sent via electronic mail transmission to the e-mail addresses listed below or, if electronic transmission is not feasible, via U.S. Mail or hand delivery to the following addresses:

Bill Jennings  
California Sportfishing Protection Alliance  
3536 Rainier Road  
Stockton, CA 95204  
E-mail: deltakeep@me.com

With mandatory copies sent to:

Douglas Chermak

Lozeau Drury LLP  
410 12th Street, Suite 250  
Oakland, CA 94607  
E-mail: doug@lozeaudrury.com

24. **Mailing of Documents to CEMEX/Notices/Correspondence:** Unless requested otherwise in writing by CEMEX, any notices or documents required or provided for by this Agreement or related thereto that are to be provided to CEMEX pursuant to this Agreement shall be, to the extent feasible, sent via electronic mail transmission to the e-mail addresses listed below or, if electronic transmission is not feasible, via U.S. Mail or hand delivery to the following addresses:

CEMEX  
Attn: General Counsel  
1501 Belvedere Road  
West Palm Beach, FL 33406

With mandatory copies sent to:

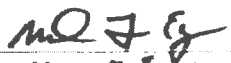
CEMEX  
Attn: Director of Environmental Services  
3990 E. Concourse  
Ontario, CA 91764

25. **Facsimile Signatures:** The Parties' signatures to this Agreement transmitted by facsimile or electronic mail transmission shall be deemed original and binding.
26. **Impossibility of Performance:** No Party shall be considered to be in default in the performance of any of its obligations under this Agreement when performance becomes impossible, despite the timely good faith efforts of the Party, due to circumstances beyond the Party's control, including without limitation any act of God, war, criminal acts outside of CEMEX's control, fire, earthquake, flood, and restraint by court order or public authority. "Circumstances beyond the Party's control" shall not include normal inclement weather, economic hardship or inability to pay.

The Settling Parties hereby enter into this Agreement.

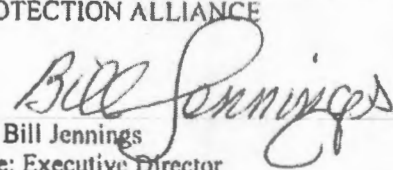
Date: 11/15, 2017

CEMEX CONSTRUCTION MATERIALS  
PACIFIC, LLC

  
By: Mike E. [unclear]  
Title: General Counsel

Date: 4 Dec, 2017

THE CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

  
By: Bill Jennings  
Title: Executive Director

APPROVED AS TO FORM

For CEMEX CONSTRUCTION MATERIALS  
PACIFIC, LLC

Date: Nov. 14, 2017

MITCHELL CHADWICK

  
By: Patrick G. Mitchell, Esq.

For THE CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

Date: Nov. 27, 2017

LOZEAU DRURY LLP

  
By: Douglas J. Chermak, Esq.

## Exhibit A



STORMWATER POLLUTION PREVENTION PLAN

GENEX WEST SACRAMENTO READY MIX PLANT

SITE MAP

DATE 08/15/12

SCALE 1"



AUGUST 2012  
PAGE 1  
DATE 08/15/12  
BY J. L. GOLDER  
CHECKED BY J. L. GOLDER  
APPROVED BY J. L. GOLDER

